

REMARKS*Status of the Claims*

With entry of this amendment, claims 1-30 and 46-65 are pending in the application. Claims 31-34, directed to a non-elected invention in accordance with the Restriction Requirement dated June 7, 2000, are cancelled without prejudice herein to advance the application to issuance. Claims 36-45 were previously canceled, without prejudice, in response to the above-noted Restriction Requirement. Claims 13-15, 17, 22-30, and 60-63, previously withdrawn as directed to non-elected species, are rejoined herein in view of the projected allowance of corresponding generic base claims encompassing the subject species. Claims 1-12, 16, 18-21, 35, 46-59, and 54-65 are examined on the merits to the extent they read on the elected species. By this amendment, claims 1, 17, and 52 have been amended for clarity in accordance with the Examiner's suggestions. These amendments are fully supported by the disclosure, and no new matter has been added to the application.

Rejoinder of Species

Applicants respectfully request that the status of claims 13-15, 17, 22-30, and 60-63 be changed from "withdrawn" to "rejoined" and that the subject claims be allowed, in addition to the previously elected species, upon allowance of the corresponding generic base claims. In this context, MPEP 809.02(b) provides that, upon indication of an allowable claim to a plurality of disclosed patentably distinct species, "Applicant is entitled to consideration of claims to a reasonable number of disclosed species in addition to the elected species provided all the claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141."

In their detailed Amendment and Response to Restriction Requirement submitted on November 7, 2000, Applicants set forth remarks directed to the subject of rejoinder of species within the generic scope of the present claims (see particularly, pp. 5-6). This issue was also discussed with the previous Examiner, Brenda Brumback, in a telephone

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interview on November 7, 2000. Examiner Brumback stated a general agreement that "dependent or 'combinatorial' aspects" of the originally presented claims that fell within the elected invention (generally characterized by the Office as human-human chimeric RSV) could be considered species within an elected genus. For example, a genus defined as human A/B chimeric RSV may incorporate one or more different heterologous gene(s) or genome segment(s), e.g., of NS1, NS2, N, P, M, SH, M2(ORF1), M2(ORF2), L, F, or G) within the partial or complete background genome or antigenome. Similarly, the disclosure clearly describes and exemplifies various specific, combinatorial modifications within a chimeric RSV selected from a diverse "menu" of useful genetic manipulations--for example involving introduction of one or more point mutations or other nucleotide changes (e.g., partial or complete deletions of non-essential genes) that specify a desired phenotype (e.g., attenuation or a change in growth and/or immunological characteristics).

The presently rejoined species claims depend directly from allowable generic claims. Therefore the requirements of 37 CFR 1.141 are fulfilled by the proposed rejoinder. Further, Applicants respectfully submit that rejoinder of the subject claims is proper on the basis that the proposed rejoinder is limited to a "reasonable number of disclosed species."

As noted previously in the Application, Applicants do not accede to the merits of either the imposed Restriction Requirement or Species Election Requirement. No representations are intended to be made herein or elsewhere in the record by Applicants with respect to the possible existence or non-existence of patentably distinct inventions among the groups of "inventions" and "species" identified by the Office.

Proposed Clarification of Claims

As noted above, a telephonic interview was held between Applicants' representative Jeffrey King and Examiner Zachariah Lucas on August 14, 2003. During the interview, Examiner Lucas conveyed his belief that all art-related issues in the application were resolved, and that the former rejection with respect to clarification of the term "RNA polymerase elongation factor" in the claims was also resolved. Examiner Lucas, however, suggested that the claims be further clarified to specify that the chimeric genome or antigenome was a complete genome or antigenome in the functional sense that



it would serve encode an infectious chimeric virus. Applicants' representative noted that incomplete chimeric viruses, or viral particles, that lack one or more non-essential genes, genome segments, proteins or portions thereof, are described in the specification that will nonetheless be functional in the sense of providing an infectious chimeric RSV for use in immunogenic compositions. On this basis it was proposed that the claims be amended to more clearly recite that the chimeric RSV genome or antigenome is functional as suggested by the Examiner by "encoding the infectious chimeric RSV". Thus amended for clarity, the claims are now believed to be in condition for allowance.

Double Patenting

During the above-noted Interview, Examiner Lucas also indicated that a new basis for a double patenting rejection had been noted based on the claims of previously-filed application Serial No. 08/720,132, now issued as U.S. Patent No. 6,264,957. Without acceding to the merits of this proposed double patenting issue, Applicants have submitted herewith a Terminal Disclaimer directed to the subject patent which renders the double patenting issue moot. Other double patenting issues are believed to be obviated in the present application based on the provisional nature of the subject rejections and the currently pending status of the applications cited in support thereof.

New Oath or Declaration

In reference to the previously amended priority to the application, Examiner Lucas kindly noted during the Interview that a new Oath or Declaration was called for in the application. Applicants acknowledge that a new Oath or Declaration executed by all inventors acknowledging the amended priority specifics will be filed under separate cover.

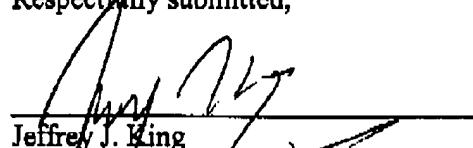


CONCLUSION

In view of the foregoing, Applicants believe that all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at (425) 455-5575.

Respectfully submitted,

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